

1 Versus, the per sub price is how much?

2 A About the same, [REDACTED].

3 Q Okay. So let's make it [REDACTED].

4 I've got the math on [REDACTED], okay? I'll give you
5 the extra penny.

6 A Fair enough.

7 JUDGE SIPPEL: Well, what are we
8 doing now, [REDACTED]?

9 MR. PHILLIPS: Let's do it at [REDACTED],
10 Your Honor, because I didn't do it for [REDACTED].
11 But I'll still make my point.

12 BY MR. PHILLIPS:

13 Q The price per sub is [REDACTED], so
14 the number of subs is about [REDACTED]?

15 A Yes.

16 Q And if you multiply that times 12
17 months you get an annual fee for Versus of
18 [REDACTED], correct, sir?

19 A Yes.

20 Q And that would actually be a
21 little more than that, because it's actually
22 [REDACTED], correct, sir?

1 A Yes.

2 Q So, and then -- so right there in
3 the bottom of 2010, instead of annual fees
4 under Option B of [REDACTED], you'd have [REDACTED]
5 or [REDACTED], however exactly the math turned
6 out, correct, sir?

7 A Yes.

8 Q And if I multiplied that all the
9 way out for [REDACTED], I'd get like 720- or
10 [REDACTED], correct, sir?

11 A Yes.

12 Q Okay. That's got those two out of
13 the way. Let's keep going. How about Major
14 League Baseball, do you recall how much that
15 one was, sir?

16 A In [REDACTED], I think it's about [REDACTED]

17 [REDACTED].

18 Q That's what I had, too, which goes
19 to show you I've got a very smart staff.

20 [REDACTED]. And how many subs do they
21 have?

22 A About [REDACTED].

1 Q Well, I did it with [REDACTED],
2 so maybe we missed some.

3 A Okay.

4 Q But at [REDACTED] times 12
5 months, I get an annual amount of [REDACTED]
6 [REDACTED]. Does that sound right to you?

7 A Yes.

8 Q Okay. And so instead of -- but
9 that's not on the Option B. That would be on
10 the Option A, correct, sir?

11 A Yes.

12 Q So the right comparison here would
13 be [REDACTED] for The Baseball Channel
14 versus [REDACTED] for The Tennis Channel,
15 correct, sir?

16 A Yes.

17 Q So if I took that all the way out
18 these [REDACTED] years -- and this math I can even do
19 in my head -- it would be [REDACTED] instead
20 of [REDACTED], correct, sir?

21 A Yes.

22 Q More than [REDACTED] more for The

1 Baseball Channel.

2 A Yes.

3 Q So let me do, then, The NBA
4 Channel. How much per sub is The NBA Channel?

5 A About [REDACTED].

6 Q [REDACTED]. I hate to say it,
7 I did [REDACTED].

8 A That's all right.

9 Q Well --

10 (Laughter.)

11 -- where is that calculator?

12 A It will be about [REDACTED].

13 Q [REDACTED], thank you.

14 (Laughter.)

15 See, you're better than I am. I
16 appreciate it.

17 That would be under Option A,
18 wouldn't it, sir?

19 A Yes.

20 Q Okay. Because that's -- they're
21 at the D1 distribution. So if I multiply that
22 [REDACTED] out, it would be [REDACTED],

1 correct, sir?

2 A Yes.

3 Q So for The Basketball Channel it
4 would still be about [REDACTED] more than The
5 Tennis Channel, correct, sir?

6 A Yes.

7 MR. PHILLIPS: Okay. He's faster
8 than you are.

9 (Laughter.)

10 JUDGE SIPPEL: If I'm going to Las
11 Vegas, I know who I'm going to take.

12 (Laughter.)

13 MR. PHILLIPS: I would, too. I'd
14 take Mr. Carroll, because I think he can bluff
15 better than I can.

16 (Laughter.)

17 JUDGE SIPPEL: Sounds like you've
18 been stung.

19 (Laughter)

20 BY MR. PHILLIPS:

21 Q Let's see, bear with me one
22 second, Mr. Bond.

1 A Yes, sir.

2 Q Okay. Let me go back -- let's go
3 back to renewals for a second. The Golf
4 Channel and the renewal at the end of [REDACTED],
5 when you were renewing that, did you do a
6 calculation of the cost of the carriage of The
7 Golf Channel at the distribution level set
8 forth in the contract?

9 A Yes.

10 Q You did, sir?

11 A Yes.

12 Q Well, I can show this to you in
13 your deposition, but I asked you at your
14 deposition that same question. In fact, I
15 just read it. And I got a different --

16 A Well, we looked at the -- we had
17 to do -- we did the renewal. It had rates set
18 out in it.

19 Q Ah.

20 A Isn't that what you're asking?

21 Q Well, I asked if you did a cost
22 calculation of the cost of carriage of The

1 Golf Channel at the distribution level set
2 forth in the contract, and I can show it to
3 you, but it --

4 A Oh, I see your question.

5 Q And what you said to me -- and I
6 can show it to you, but I'll just read it to
7 you, just to save some time -- you said, "No.
8 As it was a renewal discussion, we weren't
9 examining it in that context."

10 A Yes.

11 Q Does that sound right to you, sir?

12 A Now I understand your question.

13 Q Okay. And I asked you also, you
14 know, did you do a comparison of the benefits
15 that were received by Comcast versus the cost
16 of carriage in connection with that
17 negotiation? And you also said, "No, in the
18 context of the renewal discussion, we didn't
19 do that."

20 A That's correct.

21 Q Do you remember that, sir?

22 A Yes.

1 Q Do you agree with that still?

2 A Yes.

3 Q Now, in [REDACTED], in the renewal
4 discussions of The Golf -- I'm sorry, in [REDACTED],
5 in the renewal discussions of The Golf
6 Channel, you didn't ask Ms. Gaiski to go
7 survey the field, did you, sir?

8 A No.

9 Q And you didn't actually do a cost-
10 benefit analysis of any sort, did you, sir?

11 A No.

12 Q Did you do any sensitivity
13 analysis on the costs and benefits of
14 distribution in connection with that renewal
15 decision, sir?

16 A No.

17 Q Now, let's take the Versus
18 agreement for a second. And when you did the
19 Versus agreement, did you do a calculation of
20 the cost of carriage at the distribution level
21 set forth in the contract?

22 A No.

1 Q And you also didn't send Ms.
2 Gaiski out to do a field survey in connection
3 with Versus, did you, sir?

4 A No.

5 Q Okay. And you also didn't do a
6 cost-benefit analysis of the time for Versus,
7 did you, sir?

8 A No.

9 Q And you made this decision about
10 Tennis Channel, didn't you, sir?

11 A You're referring to [REDACTED]? Yes.

12 Q Yes.

13 A Yes.

14 Q And you made the decisions about
15 The Golf Channel renewal, didn't you, sir?

16 A Yes.

17 Q And you made the decisions about
18 the Versus Channel renewal, didn't you, sir?

19 A Yes.

20 Q Now, speaking of renewal
21 discussions for a second, you got involved in
22 the renewal discussions between Dish Network

1 -- no, I'm sorry, in between DirecTV and
2 Versus, did you not, sir?

3 A Yes.

4 MR. PHILLIPS: Your Honor, may I
5 approach?

6 JUDGE SIPPEL: Yes, sir.

7 MR. PHILLIPS: Thank you.

8 BY MR. PHILLIPS:

9 Q Does it feel warm in here?

10 A I'm perfectly fine, sir.

11 Q Pardon me?

12 A I'm perfectly fine.

13 Q Well, you've got the draft.

14 A Oh, that's true. I'm cheating in
15 that way.

16 Q Well, no, no, you're just taking
17 advantage of a -- I was going to try to liven
18 things up by using the white board on that
19 last one, but I thought I -- my absence of
20 math might get ahead of us.

21 JUDGE SIPPEL: You can take your
22 jacket off if you want. Anybody can take

1 their jacket off if they want.

2 MR. PHILLIPS: Thank you. I
3 always thought that it was better to be close
4 to the witness, and not far, but I'm going to
5 get his draft.

6 JUDGE SIPPEL: Well, we'd really
7 make time, though, if we turn the air
8 conditioning off and don't go to lunch.

9 (Laughter.)

10 MR. PHILLIPS: I think things can
11 get kind of surly if that happens.

12 BY MR. PHILLIPS:

13 Q Now, Mr. Bond, have you seen this
14 Exhibit 89 before?

15 A I think we might have gone over
16 this in my deposition.

17 Q And this is an e-mail from Mr.
18 Shell to you on around December 16, 2009, is
19 it not, sir?

20 A Yes.

21 Q Mr. Shell was the -- we have
22 discussed before -- he was the head of Comcast

1 programming side, correct, sir?

2 A Yes.

3 Q He was on the other side from you.

4 A Yes.

5 Q And this has to do with the
6 negotiations for Versus on DirecTV, correct,
7 sir?

8 A Among other networks.

9 Q And, in fact, in the references
10 here, if you look at the second e-mail down
11 from the top it -- you are writing to Mr.
12 Shell, among others, "Should we do a [REDACTED]
13 Chicago and either, say, Portland or TC?" Do
14 you see that, sir?

15 A I do.

16 Q And TC, that refers to Top Choice?

17 A Total Choice.

18 Q Total Choice, you're right. I'm
19 sorry. And Total Choice is a distribution
20 level on DirecTV, correct, sir?

21 A Yes.

22 Q And if we turn to the back -- the

1 e-mail that you -- that Mr. Shell sent to you,
2 which is carried over from the bottom of the
3 page to you -- this is the one that is dated
4 December 16th -- Mr. Shell is telling you what
5 he wants you to propose in terms of these
6 negotiations, correct, sir?

7 A He's saying he is suggesting what
8 Comcast should propose with respect to these
9 eight or nine deals that were under
10 negotiation.

11 Q And our RSNs -- that stands for
12 the Comcast Regional Sports Networks, correct,
13 sir?

14 A Yes.

15 Q And "their RSNs" refers to
16 DirecTV's Regional Sports Networks?

17 A It does.

18 Q Okay. So Mr. Shell was trying to
19 suggest to you what should be proposed in a
20 negotiation where you and DirecTV were going
21 to basically swap back and forth regarding
22 both the distribution levels and other terms

1 for your two sports networks, correct, sir?

2 A Not exactly.

3 Q Well, can you explain it to me?

4 A I can. At this moment in time,
5 there was a number of open deals between
6 DirecTV and Comcast on the one hand, and
7 between Comcast programming and the DirecTV on
8 the other hand. DirecTV owned three RSNs, and
9 those deals were up with Comcast Cable.

10 And there were some RSNs that were
11 up between -- that were owned by Comcast that
12 were up on the DirecTV service, and,
13 additionally, there was a deal in the works
14 with respect to Versus. So there was a --
15 there was a group of deals between the two
16 companies -- DirecTV and Comcast -- that were
17 all up at the same time.

18 And there was, to be honest, a bit
19 of a personality clash between Derek Chang at
20 DirecTV and Jeff Shell, and I was asked to be
21 something of the traffic cop of these -- these
22 deals. The individual agreements were

1 negotiated by the individual groups.

2 Q So you were representing the
3 programming side in these negotiations and
4 sort of the give and take on carriage and
5 other terms for your networks and DirecTV's
6 networks, is that fair?

7 A Yes.

8 Q You know, something I actually
9 forgot to cover -- and I apologize. I'm going
10 to step back for a second. Those renewal
11 discussions that we talked about a second ago
12 --

13 A Yes. Are you referring to Golf
14 and Versus?

15 Q Golf and Versus, exactly. Did you
16 do any quantitative analysis with respect to
17 how many subscribers you might have lost if
18 you had moved Golf or Versus downward in
19 penetration?

20 A No.

21 Q In other words, if you had
22 lessened the number of subs that they moved

1 to?

2 A No.

3 Q Did you do any analysis with
4 respect to Golf or Versus about any effect
5 that a change in distribution level would
6 have?

7 A No, that would have been unusual.

8 JUDGE SIPPEL: Why do you say
9 that?

10 THE WITNESS: Well, in the context
11 of renewal discussions, when you are dealing
12 with networks that are being carried, that
13 have been on for a long time, whether it's
14 Comcast networks or whether it's ADC networks
15 or Discovery networks, typically the center of
16 gravity of those negotiations really center
17 around the rate of increase. Programming
18 costs continue to increase. It's a big
19 problem for the video industry.

20 So when you're dealing with
21 established networks, there really isn't a
22 context of discussion of, are you going to

1 drop the network? As you see, cable business
2 started out with five networks, and now
3 there's 500. So, and networks are very rarely
4 dropped by distributors.

5 So once a network is established,
6 and those kind of core analog networks that I
7 discussed earlier I would all kind of consider
8 established networks, in -- you know, whether
9 I was at TCI or AT&T or Comcast, the context
10 of that discussion is not around, "Well,
11 should I drop this network?" That's unusual.
12 So the context of the discussion is really
13 around the rate of increase.

14 JUDGE SIPPEL: When you say -- you
15 mean the rate of the license increase?

16 THE WITNESS: Exactly. So as you
17 see in a lot of these deals, I have a rate per
18 sub, and that's how most of the deals are
19 built. They have a rate per subscriber, and
20 so the focus in renewal discussions, whether
21 it's Golf or Versus or Discovery or ESPN, or
22 whomever, really is relating to the rate of

1 increase over time in those license fees. So
2 that's really the center of gravity of
3 discussion in those renewals.

4 JUDGE SIPPEL: Are you --

5 THE WITNESS: And --

6 JUDGE SIPPEL: Go ahead.

7 THE WITNESS: Excuse me. I
8 apologize.

9 JUDGE SIPPEL: No, finish up.
10 Finish up.

11 THE WITNESS: As well as what
12 protection you have in terms of marketplace
13 protection, you know, or you have Most Favored
14 National protection that assures that if a
15 better deal is done by somebody else, you are
16 protected in the marketplace. So in those
17 kind of renewal discussions, that is generally
18 the context, regardless of who owns it.
19 That's generally the context of the
20 discussion.

21 JUDGE SIPPEL: Well, do you
22 seriously think that you need MFN protection

1 from Versus or from Golf?

2 THE WITNESS: We -- yes.

3 JUDGE SIPPEL: Really?

4 THE WITNESS: We always got -- in
5 the deals that we did with Versus and Golf, we
6 always insisted on MFN protection.

7 JUDGE SIPPEL: Well, they're in-
8 house, aren't they?

9 THE WITNESS: Well, fair. That's
10 a fair comment. But that is the practice.
11 That's the business practice, to seek MFN
12 protection, and we treated them the same way.
13 And we negotiated the MFNs with Golf and
14 Versus, as we would have negotiated them with
15 other networks like ESPN or History or A&E or
16 others.

17 JUDGE SIPPEL: Go ahead, yes.

18 BY MR. PHILLIPS:

19 Q I just want to follow up on that
20 for one second. I mean, I realize there's one
21 question, which is to drop them, but there's
22 another question about just repositioning

1 them. And repositioning them is often
2 discussed in renewal negotiations, isn't it?

3 A Not usually.

4 Q I thought you testified earlier --
5 and the transcript will say what it says -- on
6 direct that during renewal negotiations
7 packaging was often a subject that you
8 discussed.

9 A Yes, but usually in the other
10 direction. So when -- meaning increased
11 distribution. So if you sat down for a
12 renewal discussion with, let's say, ESPN
13 relating to their package of products, they
14 will not authorize you -- to use them as an
15 example, they will not authorize you on a deal
16 where you could put them on the sports tier,
17 to use that example.

18 So if you wanted to engage in the
19 mental exercise of would it hurt us if we
20 moved ESPN to the sports tier, it is really an
21 academic exercise, because ESPN will not
22 authorize that level of distribution. So when

1 you engage in a renewal discussion with ESPN,
2 the context of that discussion centers around
3 the rate of increase of the license fees, and
4 then typically ESPN would look to increase its
5 distribution, typically of its other networks.

6 ESPN in that case is fully
7 distributed, but they have other networks that
8 are not fully distributed. So they would be
9 looking additionally for us to commit to
10 incremental distribution. So the discussion
11 is not moving ESPN down, but rather their
12 demand for additional distribution.

13 Q But, sir, you're not suggesting
14 that Versus or Golf has the market power of
15 ESPN, are you?

16 A No.

17 Q Okay. And, in fact, from time to
18 time distributors do threaten to move networks
19 down at renegotiation periods, do they not,
20 sir?

21 A Yes. But the general practice in
22 the industry, as I have said, channels are

1 very rarely dropped. And what I said, even
2 though I used ESPN as an example, you could
3 easily put in there Food Network or HGTV or
4 Nickelodeon or Comedy Central or TNT or TBS or
5 pick any other network that you would commonly
6 find broadly distributed.

7 The context of those renewal
8 discussions are not really in the context of
9 a packaging downwards, but rather they seek to
10 maintain or grow their distribution, and they
11 seek to increase their license fees. So the
12 parameters of the discussion are typically
13 framed in that context.

14 Q Well, Mr. Bond, I submit to you
15 that you and I might spend the rest of this
16 afternoon debating this point, but I'm just
17 going to go to one example that I can think of
18 off the top of my head.

19 A Yes.

20 Q And that is, how about the NFL
21 Network, sir?

22 A Yes.

1 Q It was broadly distributed, was it
2 not, sir?

3 A No. I think it had --

4 Q Fairly broadly distributed, and
5 then it added games to the network, and then
6 --

7 JUDGE SIPPEL: You've got to let
8 him finish his sentence.

9 MR. PHILLIPS: I'm sorry.

10 JUDGE SIPPEL: He hadn't even
11 finished his answer.

12 MR. PHILLIPS: Oh, I'm sorry. I'm
13 afraid I didn't give him a timeframe.

14 THE WITNESS: Were you referring
15 to Comcast or just in the industry?

16 BY MR. PHILLIPS:

17 Q I'm referring to Comcast.

18 A I see. I misunderstood your
19 question.

20 Q I'm sorry. And I'm sorry if I cut
21 you off, because I meant to -- I thought you
22 misunderstood it, but let me --

1 JUDGE SIPPEL: Okay. Well, start
2 over again, and ask the question within the
3 timeframe, and let him finish his answer.

4 BY MR. PHILLIPS:

5 Q Prior to 2007, NFL Network was
6 broadly distributed on Comcast?

7 A It was on the D2 level of service.

8 Q Okay. And then, when --

9 A Which had about [REDACTED]
10 subs. So it was about [REDACTED].

11 Q And then, there came a point in
12 time in which Comcast repositioned the NFL
13 Network, did it not, sir?

14 A Yes.

15 Q And it didn't reposition it
16 positively to broader distribution, did it,
17 sir?

18 A No.

19 Q No. In fact, what it did is it
20 put it up on a sports tier, didn't it, sir?

21 A That's correct.

22 Q And, in fact, it put it up on a

1 sports tier right around the time that the NFL
2 Network added live NFL games to the NFL
3 Network, didn't it, sir?

4 A That's correct.

5 Q And so at that point -- and before
6 it had NFL games, did you think that the NFL
7 Network had good, quality programming?

8 A Yes. The difference there is we
9 had the right to reposition. That's the
10 difference I'm trying to explain.

11 Q I'm just -- I'm asking only about
12 what happened, sir. So the NFL Network was
13 distributed to a third of Comcast homes, and
14 then it puts on NFL games. And let me pause
15 there for a second. NFL games, I think you'd
16 agree, are about the most popular sporting --
17 live sporting events you can have, is that --

18 A The put on eight NFL games, and
19 they raised the price by about [REDACTED] percent.

20 Q And what happened was is that
21 Comcast then put them on sports tier, is that
22 not correct, sir?

1 A Yes. We had the right to do that.

2 MR. CARROLL: Your Honor, this is
3 not an objection, but for a moment I thought
4 I was two years ago and we were doing the NFL
5 case again.

6 JUDGE SIPPEL: That was a good
7 year, though, wasn't it?

8 (Laughter.)

9 MR. CARROLL: I was two years
10 younger.

11 (Laughter.)

12 MR. PHILLIPS: It was a good year,
13 Your Honor, but I just wanted to make a point
14 that in fact when it is helpful in
15 negotiations, Comcast can reposition
16 negatively, but I'll move on.

17 BY MR. PHILLIPS:

18 Q You would agree, I think, Mr. Bond
19 --

20 JUDGE SIPPEL: But they're not
21 going to get away with it.

22 THE WITNESS: Well, it didn't work